

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TREASURE CHEST THEMED VALUE MAIL,  
INC.,

17-cv-01 (NRB)

Plaintiff,

-against-

DAVID MORRIS INTERNATIONAL, INC.,

Defendant.

**PLAINTIFF'S PROPOSED FINDINGS OF FACT**

Plaintiff Treasure Chest Themed Value Mail, Inc. respectfully submits the proposed findings of fact enumerated below. For convenience of reference, each proposed finding is separately enumerated, and the proposed findings are separated into topical subsections.

**FINDINGS OF FACT**

1. Plaintiff Treasure Chest Themed Value Mail, Inc. ("Treasure Chest") is an advertising company that primarily employs direct mailing and digital media to deliver advertising materials to consumers.

2. Treasure Chest maintains a proprietary database comprised of the names and addresses of individuals in the United States who have expressed interest in vacation travel. During the relevant period of time in 2016, Treasure Chest's database included the names and addresses of over 1.4 million individuals.

3. Defendant David Morris International, Inc. ("Defendant") is an advertising company focused on assisting European-based companies market their products in North America.

4. On October 19, 2015, Defendant's president, David Morris, contacted the president of Treasure Chest, Richard Shane, seeking to engage Treasure Chest to advertise A-Rosa Cruises in the United States.

**Treasure Chest's Performance Pursuant to the Terms of the Contract**

5. The parties executed a that certain Vacation Travel Mailing Participation Agreement dated January 25, 2016 (the "Contract").

6. Pursuant to the terms of the Contract, Treasure Chest was required to:

- a) mail Defendant's insert, a double-sided flier measuring approximately 5"x8" and depicting an advertisement for AutoEurope on one side and one for A-Rosa Cruises on the other side ("Defendant's Insert"), to at least 730,000 vacation travelers along with a response card bearing the logos of A-Rosa Cruises and AutoEurope; and
- b) provide more than 300,000 follow-up digital impressions for two different products.

7. On or about March 28, 2016, Treasure Chest mailed Defendant's Insert and response card bearing the applicable logos to 1,453,000 vacation travelers.

8. Although Treasure Chest was only required to publish additional materials for two different products, Defendant provided additional materials on at least four different products: A-Rosa Cruises, AutoEurope, Silver Sea Cruises and Ama Waterways.

9. Treasure Chest published all of the additional materials provided to it by Defendants in Treasure Chest's weekly electronic newsletters and on its social media pages.

10. Treasure Chest's Facebook page alone had 300,000 followers during the relevant period of time, and its Twitter and Instagram pages had over 39000 and over 10,000 followers, respectively.

### **Treasure Chest's Guarantee**

11. Treasure Chest guaranteed that Defendant would receive greater than 3,000 leads, or Defendant would be allowed to participate in the following season free of charge.

12. Treasure Chest delivered 6,118 total leads to Defendant, 3,441 for A-Rosa Cruises and 2,677 for AutoEurope.

13. Defendant did not pursue the vast majority of leads provided, having followed-up on no more than 500 of the leads.

14. Under the terms of the Contract, Defendant was not guaranteed to receive actual bookings.

### **Treasure Chest's 2016 Database was Viable for the Spring 2016 Campaign**

15. Treasure Chest participated in a matchback for another company that participated in the same mailing campaign as Defendant.

16. The result of that matchback confirmed the viability of Treasure Chest's database, confirming almost 3000 bookings directly attributable to its participation in Treasure Chest's mailing campaign.

### **Defendant Failed to Perform its Obligations Pursuant to the Terms of the Contract**

17. In exchange for participation in Treasure Chest's advertising campaign, Defendant agreed to: (a) pay \$45,000 to Treasure Chest on or before July 1, 2016; (b) provide up to \$40,000 in airfare and hotel accommodations to Treasure Chest at fair market value; and (c) provide up to \$10,000 in A-Rosa cruise tickets.

18. Defendant failed to pay \$45,000 to Treasure Chest.

19. Defendant failed to provide any A-Rosa cruises to Treasure Chest.

20. Defendant refused to provide more than \$13,000 in airfare and hotel accommodations.

**Treasure Chest Suffered Damages**

21. In light of Defendant's failure to perform its obligations under the Contract, Treasure Chest has suffered damages of \$82,000.00.

22. Pursuant to the terms of the Contract, Treasure Chest is entitled to interest at a rate of 1.5% per month, or \$1,230.00 per month.

23. Pursuant to the terms of the Contract, Treasure Chest is also entitled to recover costs and attorney's fees.

Dated: New York, New York  
May 24, 2018

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